

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**OLLEN G. COLBERT, Jr.**

3475 Vine St.

Cincinnati, Ohio 45220

Plaintiff,

vs.

**CINCINNATI GAS AND ELECTRIC CO.**

139 E. Fourth St.

Cincinnati, Ohio 45202

and

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 1347**

4100 Colerain Avenue

Cincinnati, Ohio 45223-2590

Defendants.

) Case No.: C-1-00-909

) Judge Susan Dlott

) Magistrate Judge Timothy J. Hogan

) **PLAINTIFF'S MOTION FOR**  
) **EXTENSION OF TIME TO RESPOND TO**  
) **THE MOTIONS FOR SUMMARY**  
) **JUDGMENT BY CINERGY/THE**  
) **CINCINNATI GAS AND ELECTRIC**  
) **COMPANY AND THE INTERNATIONAL**  
) **BROTHERHOOD OF ELECTRICAL**  
) **WORKERS, LOCAL 1347**

Comes now Plaintiff, Ollen G. Colbert, Jr., by and through counsel, to respectfully move the Court to grant Plaintiff an extension of time to respond to the Motion for Summary Judgment filed on January 13, 2005, by Cinergy/ The Cincinnati Gas and Electric and the Motion of Summary Judgment filed on January 14, 2005 by International Brotherhood of Electrical Workers, Local 1347. As more specifically shown in the Attorney's Affidavit, Plaintiff's case is a hybrid case and Defendants Motions require responses on several different levels. Plaintiff's Counsel has been burdened with litigation in U.S. District Court in Columbus, Ohio and in Clermont County, Ohio. Counsel for the defendants, namely Ariane S. Johnson, for Cinergy/The Cincinnati Gas and Electric Co. and Jerry Spicer, for International Brotherhood of

Electrical Workers, Local 1347, have been notified by telephone of my request. Mr. Spicer's secretary called to say that International Brotherhood would not object to this extension. Ms. Johnson, replying for Cinergy/The Cincinnati Gas and Electric Company, also has no objection. Plaintiff requests that the Defendants' Reply deadline be extended to the same extent of time he is give.

WHEREFORE, Plaintiff requests a two-week extension, from February 7, 2005 to February 21, 2005.

Respectfully submitted,

s/Rose Ann Fleming  
Rose Ann Fleming (0041337)  
Rose Ann Fleming, P.C.  
3855 Ledgewood Drive, Suite 13  
Cincinnati, OH 45207  
Phone: 513-924-8389  
Fax: 513-745-4282  
Email: Fleming@xavier.edu  
Attorney for Plaintiff

**AFFIDAVIT OF ATTORNEY IN SUPPORT OF MOTION TO EXTEND TIME**

STATE OF OHIO )  
 )SS:  
COUNTY OF HAMILTON )

I, Rose Ann Fleming, the undersigned, having been duly warned and cautioned, do hereby depose and state:

1. I am an attorney in good standing
2. I am the Counsel for Plaintiff in the above captioned matter.
3. I am currently involved in heavy litigation in U.S. District Court, in Columbus, Ohio, and in Common Pleas Court in Clermont County, Ohio and Butler County, Ohio.

4. I need a two-week period of additional time to respond to the motion for summary judgment filed on January 13, 2005 by Cinergy/The Cincinnati Gas and Electric Company and the motion for summary Judgment filed on January 14, 2005 by the International Brotherhood of Electrical Workers, Local 1347, on January 14, 2005.

5. This case is a “hybrid” case, arising out of issues of employment law as well as out of issues employment discrimination based on race, and hostile environment, to mention only two.

6. Further, the Defendants have introduced the former case, *Colbert v. Cincinnati Gas and Electric Co., et al.*, (Case No. 1:97-CV-00685), filed July 23, 1997, as a *res judicata* defense. Plaintiff’s present Counsel is not familiar with this case, it is only partially on the internet, Plaintiff does not have his file on it, and thus extended time is required to become familiar with it.

7. Defendant Cinergy has raised an issue of continuing versus discrete discrimination based on the Plaintiff’s multiple and successive filings with EEOC which requires legal research on Plaintiff’s part in order to form a reply.

8. In addition, Plaintiff must deal with the difficulties caused by the denial of required discovery imposed by the Court’s Order entered December 7, 2004, (Doc. 87), granting in part “limited” discovery to Plaintiff’s Motion (Doc. 81). . Examples of such difficulties are as follows: (a) Defendant Cinergy/The Cincinnati Gas and Electric Company made certain fact statements such as Plaintiff has no proof that he can establish a “prima facie” case on discrimination when Defendant have in their control almost all of the information required to do so and will not release it. (b) Defendant International Brotherhood of Electrical Workers, Local 1347, states that Plaintiff cannot show that the Union Contract was broken when it will not

release a copy of the Union Agreement pertinent to the year of Plaintiff's termination, namely, March 8, 2000.

9. Therefore, because of Plaintiff's lack of critical information totally in the control of the Defendants and because of the complexity of the legal issues herein, Plaintiff's Counsel is required to spend more time in research of the legal arguments raised by the Defendants, among other things, than she would have had to do otherwise.

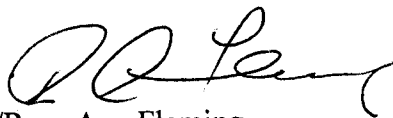
10. In the interest of justice for the Plaintiff, I am asking the Court to extend the deadline for submission of Plaintiff's responses in this matter from February 7, 2005, to February 21, 2005.

11. I have called both Counsel at their law offices to let them know of this Motion to Extend Time and to ask if they would object. Mr. Spicer, on behalf of Defendant, International Brotherhood of Electrical Worker, Local 1347, has responded by his secretary that he would not object to a two week extension of time. Ms. Johnson did also reply on February 3<sup>rd</sup> that she has no objection to this Motion to Extend Time, but wishes the Reply time of Defendants extended by like number of days.

12. Plaintiff requests that the Defendants' Reply time to Plaintiff's Response be extended by two full weeks.

12. I do not ask for this extension to delay this trial.

AFFIANT FURTHER SAYETH NAUGHT.

  
\_\_\_\_\_  
/s/Rose Ann Fleming  
Rose Ann Fleming, Affiant

Sworn to and subscribed in my presence, this 2<sup>nd</sup> day of February, 2005.

  
\_\_\_\_\_  
Notary Public

My commission expires: 6/22/08



### CERTIFICATE OF SERVICE

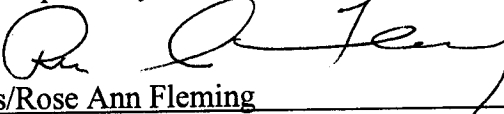
**HEREBY CERTIFY** that the Plaintiff's Motion to Extend Time was electronically filed using the Case Management/Electronic Case Filing (CM/ECF) system with the Office of the Clerk of Courts, United States Federal District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S. Courthouse, 100 E. Fifth Street, Cincinnati, Ohio 45202 on the 3<sup>rd</sup> day of February, 2005. Such filing will send notification of such filing to the following Counsel for Defendants:

Ariane S. Johnson, Esq.  
Cinergy  
Cincinnati Gas and Electric Company  
1000 East Main Street  
Plainville, IN. 46168

Jerry L. Spicer  
International Brotherhood of Electrical Workers. Local 1347  
Snyder Rakay Spicer  
11 W. Monument Street, Suite 307  
Dayton, OH 45402

Plaintiff also delivered, via Certified Mail, Return Receipt Requested, a copy of this above referenced document to the above named counsel for Defendants on this 3<sup>rd</sup> day of February, 2005.

Respectfully submitted,



s/Rose Ann Fleming

Rose Ann Fleming  
Bar Id. #0041337  
Attorney for Plaintiff  
Rose Ann Fleming Professional Legal Corp.  
3855 Ledgewood Drive  
Suite 13  
Cincinnati, OH 45207  
Phone: 513-924-8389  
Fax: 513-745-4282  
Email: [fleming@xavier.edu](mailto:fleming@xavier.edu)